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ESTABLISHING A BUSINESS ENTITY IN RUSSIA

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ESTABLISHING A BUSINESS ENTITY IN RUSSIA

Russia is the largest country in the world in terms of size, having a vast territory of 17.1 million square kilometers. It shares borders with many European and Asian countries such as Norway, Finland, Estonia, Latvia, Lithuania, Poland, Belorussia, Ukraine, Georgia, Azerbaijan, Kazakhstan, China, and Mongolia (plus sea borders with the United States and Japan). Its population in the beginning of 2010 numbered 141.9 million people.

Russia is a federal republic comprised of 85 constituent entities. There are six categories of federal constituent entities that represent equal members of the federation. They include 22 republics, 46 regions, one autonomous region, 9 territories (krais), 4 autonomous okrugs and three cities of federal significance: Moscow, St. Petersburg and Sevastopol.

The 8 years of Vladimir Putin's presidency from 2000 to 2008 was a period of rapid economic growth incurred by an increase in commodity prices and accompanied by a significant increase in living standards. Local consumption was fueled by the introduction of consumer loans and mortgages. The country was exposed to the crisis that started in the final quarter of 2008, as national Gross Domestic Product decreased to 7.8% for 2009, however by the year 2013 a number of Russian areas had mostly returned to pre-crisis levels.

Despite foreign investments falling in 2009 by 21 percent to USD 81.9 billion, already the beginning of 2010 resulted in an economic revival which led to further growth and development in various industries.

The Russian government focuses on the creation of a modern, innovative economy. The current trend in Russian government activity is making the country and its economy more attractive to foreign investors and less dependent on the country's huge, but exhaustible resources. Within the last several years Russia has become a large presence in the global economy.

Russian law is a civil law system. Therefore, the main regulations in the area of business and economic relations are contained in different legislative acts, adopted mainly at the federal level by the Parliament ("State Duma"), and subordinate acts issued by various governmental authorities and institutions. Legislative power is exercised by a bicameral Federal Assembly, which consists of the Federation Council (upper house) and the State Duma (lower house).

1. Types of Business Entities

Foreign investors may conduct business activities in the territory of Russia using one of the forms of legal entities stipulated by the law.

The law establishes an exhaustive list of forms for commercial entities. It includes partnerships (general partnerships and limited partnerships), companies (limited liability companies, public joint-stock companies and joint-stock companies (non-public), as well as peasant (farm) enterprises producers' cooperatives, business partnerships and state and municipal unitary enterprises. State and municipal unitary enterprises are commercial organizations in which the ownership of assets does not pass to the organization itself. The assets of a state-owned or municipal enterprise are under government or municipal ownership; the enterprise has the rights of administrative management or operational control. Only state-owned and municipal enterprises can be set up in the form of unitary enterprises. The unitary enterprise is managed by its director, who is appointed by the owner (i.e., state or municipal

authority) or the body authorized by the owner and is accountable to them. In the late 1990s, the government decided to end this form of organization. However, many of these enterprises still exist.

Most common forms of business entities that are used by foreign investors in their commercial activities in Russia as well as a description of the steps for their establishment and registration are set out below.

1.1 A description of the types of entities available for conducting business

Limited Liability Company

A limited liability company ("obshestvo s ogranichennoy otvetstvennostyu" or "OOO" in Russian) (the "LLC") is the most widely used form of business entity according to official state statistics. It is a non-public company. An LLC is allowed to engage in most business activities. The charter capital of an LLC is divided into shares (participatory interests) that are not actually recognized as securities. Generally, a participant's liability is limited to the amount of his investment in the charter capital, i.e. to his participatory interest. The LLC is regarded as a simplified business entity and the least burdensome, as the rules governing an LLC's internal corporate relations are mostly of flexible nature. An LLC may have no more than 50 participants and LLCs with sole participants are not prohibited[1].

The minimum charter capital of an LLC amounts to RUB 10,000 (approx. 150 USD) and is divided into participatory interests. There is no requirement as to the minimum size of each participant's contribution, but the Charter of the LLC may provide for one member's maximum participatory interest. Participatory interests may be paid in various forms including cash, securities, assets, and rights. The forms of contribution to the charter capital can be limited if provided for in the Charter. The Charter or corporate agreement of an LLC may provide for a non-proportionate distribution of members' rights to their shares provided that this information is included in the unified state registry of legal entities (EGRUL).

Specific legislation can stipulate larger amounts of charter capital depending on the business activities which will be exercised by the LLC (or any other legal entity). For example, in order to obtain a license for the retail of spirits and wines (except beer) depending on the region of the Russian Federation, the LLC could be obliged by regional state authorities to have charter capital of no less than RUB 1,000,000 (approx. 14,700 USD).

The charter capital of the LLC is payable within four months from LLC incorporation date. Once the charter capital is paid in full it may be increased or decreased by resolution at a general participants' meeting. An increase of the charter capital may be implemented on the account of the company's assets, the secondary investments of participants or the contribution of third parties admitted to the LLC. Charter capital decrease requires the notification of all creditors of the LLC.

Joint-Stock Companies

A joint stock company (a "JSC") ("aktsionernoe obshestvo" in Russian) is a commercial corporate entity entitled to carry out most

[1] Unless the sole participant of LLC is a legal entity having only one participant, which is in general prohibited under art. 66 of the Civil Code

business activities. Unlike an LLC, the charter capital of a JSC is divided into shares recognized as securities. Thus, a wide range of rules related to capital markets and securities applies to JSCs. Moreover, corporate legislation applicable to JSCs appears to be more imperative and precise.

There are two types of JSC:

- public joint stock company (PJSC) in case (a) it performs public placement of shares (bonds) or (b) said shares (bonds) are publicly listed or (c) its Charter and name refer to its public status;
- non-public joint stock company, named "joint-stock company" (NJSC) if it doesn't meet abovementioned criteria of the PJSC.

The PJSC and NJSC differ in charter capital amount requirements, requirements on the number of shareholders, public placing limitations issues, the preferential rights of shareholders, and requirements on information disclosure. A PJSC may have an unlimited number of shareholders. Shareholders in a PJSC are entitled to freely alienate their shares. The number of shareholders in a NJSC should not exceed fifty, otherwise it must be transformed into a PJSC, and the shareholders of a NJSC may benefit from preferential rights on alienated shares.

The minimum authorized capital for an PJSC is RUB 100,000 (approx. 1,500 USD), whereas the minimum authorized capital for a NJSC is RUB 10,000 (approx. 150 USD). Both PJSCs and NJSCs are entitled to issue ordinary and preference (no more than 25%) shares. Shares of a particular type should be of equal nominal value. NJSC shares are not subject to public placement and circulation, but both PJSCs and NJSCs are entitled to issue bonds. Issuance of any securities, as well as their consolidation, conversion or division, require certain corporate approvals, in most cases – by an extraordinary resolution at a general meeting. At the same time, all such procedures are subject to capital market regulations.

Ordinary shares grant the shareholder the same corporate rights as a participant in an LLC: management (voting) rights, the right to obtain information about the corporation's activities, and the right to receive the declared dividend and liquidation quota. Preference shares, as a general rule, are "non-voting" but may become voting in certain cases specified by law.

The number of a shareholder's votes is proportional to his stake, reflected in the register of shareholders containing information about each registered shareholder including the number, category, and classes of shares held. The Charter or corporate agreement of NJSC may provide for a non-proportionate distribution of members' rights to their shares provided that this information is included in the unified state registry of legal entities (EGRUL). Like participants in an LLC, shareholders in a NJSC possess a pre-emptive right to purchase shares sold to third parties at the same price. Shareholders in both types of JSC have a pre-emptive right to purchase newly publicly issued shares pro rata to their existing stakes.

Partnership

Partnerships ("tovarishestvo" in Russian) are considered less formal business entities and are actually less widespread. A partnership means: joint ownership, joint management and joint profits. The Civil Code distinguishes between Full ("polnoye" in Russian) and Limited ("tovarishestvo na vere" in Russian) partnerships. A limited partnership may have two types of members: partners (full partners) and contributors (limited partners). The number

of limited partners must be no more than 20 people, otherwise it must be transformed into a company within one year (if not, it is subject to liquidation upon court's decision). Full partners are fully liable for their partnership obligations. Limited partners bear liability the same way as LLC participants do (i.e. limited by their share in the capital) but are not entitled to participate in management. Only commercial entities and sole proprietors may act as full partners, while there are no such limitations for limited partners. In addition, full partners may participate only in one partnership as full partners.

In Russia, a partnership should create a pooled (joint) capital, which consists of all tangible and intangible property contributed by partners (and by limited partners if applicable). There is no requirement on the minimum amount of pooled capital. Profits and losses are distributed among the partners pro rata their interests in the pooled capital. Both full and limited partnerships are not entitled to issue any securities.

The ownership stakes of all partners are equal, unless agreed otherwise in the Foundation Agreement. If a partner drops out of the partnership, he should be given the monetary or property equivalent of the current value of his interest. For the alienation of a share in partnership to third parties or another partner, the consent of all other partners should be obtained.

Business Partnership

A business partnership ("hozyaistvennoye partnerstvo" in Russian) is a form of business entity, which was introduced by the Federal Law "On business partnerships" that became effective starting from the 1st of July 2012. This form must be distinguished from the above described forms of full and limited partnerships. From the legislative standpoint, business partnerships are intended to operate as an SPV in the course of innovative activities (including venture activities). A business partnership is determined by the law as a commercial organization created by one or more persons that is managed by the participants of the partnership or other persons. A business partnership has limited capability in the sense that it is not allowed to establish other legal entities (except non-profit unions and associations). Neither can a business partnership issue obligations or other equity securities. Russian Law defines the formation of pooled capital in business partnerships by analogy with full and limited partnerships. Contributions to the pooled capital can be assets, monetary funds, proprietary rights and other rights having monetary value. However, securities may not be contributed to its capital, except for bonds issued by certain companies included in a special list maintained by the Bank of Russia.

There are no minimum pooled capital requirements for business partnerships.

Partners' interests should be defined in the register of the business partnership. Partners' interests in the pooled capital may be subject to transactions. The procedure of concluding such transactions is mostly determined by Management Agreement. Partners enjoy pre-emptive rights to purchase other partner's interest (this rule may be rescinded by Management Agreement).

Representative Offices and Branches

Foreign companies are able to start a business in Russia through a branch ("filial" in Russian) or a representative office ("predstavitelstvo" in Russian). According to the Civil Code, both branches and representative offices are not

acknowledged as legal entities, but recognized only as subdivisions of their head company (including foreign companies) ("subdivisions"), which are located in a place other than the head company's office. The activities of representative offices and branches are maintained by the head company, which is to provide assets and to be fully liable as well.

These two kinds of subdivisions differ in the functions they are supposed to implement. A representative office is entitled only to represent and to protect the interests of the head company and is supposed to be engaged in non-commercial activities. A branch, in turn, is entitled to perform any of the head company's functions, including but not limited to representative office functions, on behalf of the head company. In particular, a branch is generally taken to be engaged in commercial activities with subsequent deprivation of profit.

1.2 Matters to be considered when choosing a particular business entity type

An investor should answer the following questions when deciding which legal structure to employ in his or her business:

1. Constitutive aims (to make profit or engage in socially oriented activities)
2. Plans of business development (to form a public company and attract investors, or run an independent company and not borrow any funds)
3. Business holders' rights (their participation in management, their level of involvement in business development)
4. Confidentiality of business
5. Level of defense against corporate attacks
6. Tax planning
7. Starting expenditures

There are no strict advantages or privileges to any form of business organization. Tax planning is performed individually depending on entrepreneurial business and other factors.

The choice of business legal structure depends on the goals of its incorporators. The LLC is, apparently, the simplest model both in terms of its incorporation procedure and its further functioning (there is no requirement to register the issuance of shares; therefore, the founders don't incur costs related to this). The participants can also remain in effective control by using, in particular, their preferential right to acquire transferred interest in the authorized capital. A NJSC has lots of similarities with an LLC, and the main difference is in the composition of the charter capital: shares as securities in a NJSC compared to participatory interests in an LLC. A NJSC provides a substantially higher level of confidentiality, but corporate risks are also higher. A PJSC is a form of public organization—its main purpose is to attract investment. It requires large material and organizational expenditures and assumes more complicated mechanisms of company management and decision-making by regulatory bodies. If the founder cannot decide whether the company will be public at its establishment but doesn't wish to lose such a possibility later on, it is better to choose a NJSC as opposed to an LLC, as the procedure for changing the business legal structure from a NJSC to a PJSC is simpler.

Legal entities may use standard charters adopted by the authorized body. Information on use of standard charter shall be included into EGRUL on the basis of special application which shall be filed with the registering authorities.

If the company's aims change, it is possible to hold a reorganization (for tax optimization, increased transparency, as well as its

capitalization): to form a holding company, to enlarge or diminish separate companies, to render merger and acquisition transactions, etc.

If the purposes of establishing a legal presence in Russia are rather limited, it might be reasonable to consider opening a representative office that will perform only general marketing tasks. Despite its accreditation procedure being rather time consuming and substantially more expensive than the incorporation of an LLC, in the long term the representative office will enjoy the advantages of less administrative formality and bureaucracy when receiving work permits for its foreign employees, easier funding procedures, and even some tax exemptions. Having similar benefits, a branch could also be a convenient and suitable option for foreign investors who plan to start certain real business activities (e.g., production, maintaining warehouses, rendering services, etc.) right away. However, it should be taken into account that both of these forms are less flexible for further extension of foreign business in Russia and are limited in some business opportunities that are available to local legal entities.

In any case, while starting up a business and later on while running it, it is essential to strictly follow all procedures as stipulated in the legislation. This will not only prevent claims from state authorities but will also increase the company's capitalization and ease further business operations and development.

The next section will divulge in more detail the main steps required to establish certain forms of legal entities in the territory of Russia.

2. Steps and Time required for Establishment

Limited Liability Companies

An LLC may be established at foundation or through the reorganization of a currently existing entity. An LLC is established on the basis of a Foundation Agreement and the Resolution of a foundation meeting (or the Resolution of the sole founder), but, as with all other legal entities, is considered incorporated from the date of its state registration. The procedure of LLC establishment usually takes from two to four weeks and includes registration with the tax authorities and with non-budgetary pension and insurance funds and statistics authorities, the creation of a seal, the opening of bank accounts, the appointment of a General Director and some other internal corporate actions. LLC registration does not require any securities issuance procedures, but participatory interests should be paid within 4 months after the time of state registration. At the moment of registration, no participatory interests need to be paid.

LLC incorporation procedure

In compliance with the provisions of the Law on registration, the incorporation procedure for legal entities is comprised of the following steps. The first step consists of the preparation of a full set of incorporation documents to be submitted to the registering authorities, i.e. Russian Tax authorities. LLC incorporation documents consist of an application for LLC incorporation with the duly verified signature of the applicant, the resolution on establishment, the LLC's future Charter, a stamp duty payment notice. The legal address of the future LLC shall be proved by a warranty letter from the lessor and its ownership certificate for the rented premises. LLC as well other legal entities can exercise their business activities on the basis of a model charter adopted by the authorized body. The fact that LLC acts pursuant to a model Charter is entered into unified state registry of legal entities (EGRUL).

For a non-resident applicant, incorporation documents include a notarized translation of the non-resident applicant's passport (unless the

documents are lodged by an authorized person acting pursuant to Power of Attorney). A notarized Russian translation of the apostilled extract from the Trade register of foreign companies acting as participant(s) in the future legal entity is also required under the law.

The presence of the shareholder's appointed official (i.e., acting by virtue of bylaws and not power of attorney) in Russia is recommended at the time of filing for state registration. If that is not possible, the applications may be signed abroad in the presence of the local Notary, apostilled, filed by post, then translated into Russian (with the notarial certification of the translator's signature), and then submitted to the Tax authority by the authorized person acting pursuant to Power of Attorney. Though that will significantly increase the duration of the process.

Upon the submission of the full set of LLC incorporation documents to the Tax authorities, the consideration of the documents by the Tax authority takes three business days starting from the date following the documents' submission to the Russian Tax Authorities. If a positive decision regarding state registration is passed by the Tax authority, the legal entity's incorporation documents can be collected from the Tax authorities by an authorized person acting pursuant to Power of Attorney[2]. The second step consists of the registration of the newly established legal entity with the Statistics authorities and non-budgetary funds. Said procedure includes submitting certified copies of the legal entity's incorporation documents to Mosgorstat and the Pension and Social insurance funds and obtaining confirmation of the registration. This step usually takes no more than 1-2 business days from incorporation. The third step consists of opening an operating bank account.

Opening the operating account takes around 3-5 business days upon the submission of the full set of documents on the newly established legal entity depending on the bank's requirements. Participatory interests in monetary form may then be paid on the operating account of the company (within 4 months since the moment of LLC's registration).

Since 01 May 2014 requirement on notifying the pension fund and social insurance fund on opening operating account has been abolished.

Joint Stock Company

The establishment and state registration of a JSC is not significantly different from that of an LLC. Nonetheless, the establishment of a JSC is closely connected with stock issuance procedures aimed at constituting the charter capital. At the moment of state registration, a JSC is not required to have it paid in at all, but the placement of stock should be implemented at the stage of JSC incorporation. Stocks placed at the incorporation shall be paid in full within a year since JSC incorporation date. At the same time not less than 50% of mentioned stocks shall be paid within three months as of JSC incorporation date.

[2] However, according to recent changes introduced to the Law on registration, the legal entity's incorporation documents are to be provided in electronic form. Special request can be attached to the set of LLC incorporation documents enquiring the documents in be provided in paper form

Individuals and legal entities may be the founders of a JSC. A company's foundation document, i.e., its charter, must include information on the company's name, location, the size of its charter capital, the quantity, nominal value and categories of its shares as well as the classes of preferred shares issued by the JSC. It should be noted that location of JSC as well as other of other entity is determined by indicating the name of federal constituent entity (for instance city of Moscow) where the legal entity is registered.

Partnership

The constitutive document of a partnership is the Foundation Agreement, which should contain detailed clauses on the amount of pooled capital, on the partners' shares and the order of their change, etc. The registration process is similar to that of an LLC as described above.

Business Partnership

Procedures of establishment, reorganization and liquidation applicable to business partnerships are simplified. The establishment of a business partnership is implemented by at least 2 and no more than 50 persons (either individuals or legal entities) by the decision of a partners' (founders') meeting, which should, at the same time, adopt a Charter. The establishment of a business partnership through the reorganization of an existing legal entity (or entities) is restricted. The statutory document of a business partnership is the Articles of Association. A business partnership is governed in compliance with a partnership management agreement entered into by the partners in front of notary. This agreement is verified and kept by the notary.

The registration process is also similar to that of an LLC as described above.

Establishment of RO and Branch

Both subdivisions should be founded and terminated on the basis of the head company's charter and the provisions of a special local act. In accordance with Russian legislation a representative office and branch of a foreign legal entity in Russia may be opened without any special restrictions. For confirmation of the official status of the representative office or branch it is necessary to undergo an accreditation procedure with the Federal Tax Service of the Russian Federation (FTS)[3].

Hence, the opening of branches and representative offices consists of several stages, specifically: the accreditation of a branch or representative office with the FTS, and the registration of a branch or representative office with the tax authority within 30 calendar days of the date of the commencement of its activities in the Russian Federation.

Within the period of 12 months since adopting a decision on opening a representative office or branch, the foreign company shall file an application with FTS for accreditation. The accreditation of a representative office is issued by a registration body for unlimited period till ceasing of activities performed by representative office or branch pursuant to respective decision of the head company.

Starting from 01 January 2015, the accreditation procedure changed due to the enactment of the Federal law dated 5 May 2014 N 106-FZ "On

[3] Starting from 01 January of 2015 accreditation of branches and representative offices of foreign companies is exercised by Federal Tax Service of the Russian Federation.

introduction of amendments to the particular legal acts of the Russian Federation":

- application on accreditation shall include certain documents enclosed to it (the list of the documents will be adopted by the authorities namely, apostilled documents on the head company including an extract from the Trade register of foreign companies, tax registration certificate, incorporation documents; resolution on establishment; Regulations of representative office in Russia; Power of Attorney granted to Head of representative office; stamp duty payment notice), as well as certified by the Chamber of Commerce and Industry of the Russian Federation (CCI) data on the number of foreign employees of a branch or representative office;
- term for making a decision on accreditation by the FTS is 25 business days;
- document on introduction of entry to the Register constitutes a proper confirmation of accreditation;
- accreditation denial is possible not only in case of inconsistencies in the submitted documents or violation of the term for their delivery, but also for the reason of contravention of a branch or representative office opening purposes to the legislation, as well as in the case that such purposes threaten the sovereignty, political independence, territorial integrity, national interests of the Russian Federation;
- registration of changes to the Register is performed within 10 business days from the day of delivery of proper documents to the FTS.

The management of the RO or branch is carried out on the basis of decisions taken by the foreign company. The latter is entitled to adopt Regulations for the RO or branch that are registered with the applicable authorities (FTS).

The RO of a foreign legal entity consists of the Head of the RO acting pursuant to Power of Attorney issued in his favor by the foreign entity.

In accordance with provisions of the Civil Code of the Russian Federation, the RO is not a legal entity, it does not conduct commercial activity on the territory of the Russian Federation nor derives profit. Thus, it does not have its own funds for disposal. The RO performs representative functions and protects the interests of the foreign legal entity.

There are no requirements as to the formation of charter capital or initial funds for an RO or branch.

RO foreign employees will have to undergo a procedure of personal accreditation with the Chamber of Commerce and Industry of the Russian Federation and obtain a personal accreditation certificate. Personal accreditation of RO employees is performed within the overall number of employees indicated in the register of accredited branches and representative offices.

Apart from the above, in the case of employing non-residents, general requirements of Russian labor legislation should be complied with, i.e., registration with State migration authorities, and obtaining invitations and work permits. The statement below is a general overview of the organization of management bodies in the above listed legal entity types including the specifics of their functioning.

3. Governance, Regulation and Ongoing Maintenance

3.1 Governance and Management

Limited Liability Company

All participants of an LLC are granted certain mandatory corporate rights, the number of which depends on the participatory interest amount, and additional rights provided in the Charter or the Shareholder's Agreement. The number of LLC (and all NJSC) participants' corporate rights may be defined not only depending on the participatory interest amount, but also according to other rules, if provided by the LLC's (or any other NJSC's) Charter or by the corporate agreement in case this information is included in the Unified state registry of legal entities (EGRUL).

The participants are entitled to participate and vote in the general meeting, which is considered the supreme governing body of the LLC. Its exceptional jurisdiction includes resolutions on various issues, namely: amending the Charter, increasing the charter capital, forming (appointing) other corporate bodies, approving annual reports, issuing bonds, reorganization or liquidation, etc. The Charter of an LLC (as well as NJSC) may provide for the extension of competence of the general meeting and a special order of its convening, preparation and holding may be established. Some issues require the unanimous resolution of all participants, but ordinary issues require simple majority of votes, unless otherwise set in the Charter. In an LLC consisting of a sole participant, issues within the jurisdiction of the general meeting are adopted by resolution of the sole participant. According to the Law "On Limited Liability Companies" a distinction is made between ordinary and extra-ordinary general meetings; the former should be conducted at least once a year, the latter may be convened by the general director at any time.

Decisions passed by the general meeting and list of participants who attended the meeting shall be confirmed by notary unless the Charter provides for other way of affirming these facts.

Russian law contains certain provisions for protecting minority shareholders' rights and interests. Shareholders' rights including the right of control, property rights, and the right to information allow minority shareholders to avoid various forms of abuse. The most important property rights for minority shareholders are the pre-emptive right to purchase shares in the legal entity (in Russian law this pre-emptive right is applied if in the LLC a participant is willing to sell their shares to a third party); the right to re-buy their shares in certain cases (as in the reorganization of the company or the acquisition of shares from minority shareholders at squeeze out); and the right to dispute certain transactions of the company in arbitration courts for the benefit of the company. Moreover, the main relief in the case of a violation of property rights is claiming for damages.

An LLC is not required to create a board of directors (supervisory board) (the "BoD"), but this also may be established by the Charter. The existence of a BoD is considered mandatory as an exception in cases of an LLC bonds listing. The functions and jurisdiction of the BoD are completely determined by the Charter.

The statutory body of the LLC, empowered to act on behalf of the company in all affairs, is the sole executive body which is generally

represented by a general director (analogous to the "CEO") or a Managing company acting under special agreement with the LLC . The Charter may limit the powers of the sole executive body in its relations with third parties. Some transactions (Major transactions, interested party transactions and others if stipulated by the Charter) require the additional corporate approval of a general participant's meeting or of the Board of Directors. Generally, an LLC is not required to form a collective executive body, however its formation and powers may be stipulated by the Charter.

The day-to-day management of the LLC is the responsibility of the sole executive body, which may comprise one person, several persons acting simultaneously, or several sole executive bodies acting independently, or may consist of both a sole executive body and a management committee (a collective executive body). The collective executive body is responsible for all matters that do not fall within the authority of either the board of directors or the general participants' meeting. The Board (management committee or board of governors) represents a collegial executive body made of individual persons only. Said persons may not be participants/shareholders in the company at the same time. The CEO of the company exercises the powers of the chairman of the company Board. The jurisdiction of the Board and its decision-making is to be outlined in the LLC's charter or internal documents of the company.

Usually, the company's Board is entitled to (without limitation):

- decide on managing the day-to-day activities of the company;
- ensure the implementation of the decisions of the General participants' meeting and the BoD;
- develop priority financial and business plans to be adopted by the BoD and approve internal documents of the company on matters within the jurisdiction of the executive bodies of the LLC;
- approve certain company transactions.

The Charter of LLC may provide for delegation to the BoD of some issues under the general meeting's competence. The functions of Board can be performed by the CEO or the BoD if also provided by the Charter. The same rules are applied to the NJSC.

Joint Stock Company

The general shareholders' meeting constitutes the supreme governing corporate body. The general meeting's competence of a PJSC cannot be extended. Decisions passed by the general meeting of JSC shareholders and list of shareholders who attended the meeting shall be confirmed by the person maintaining the registry of the company. The shareholders are entitled to enter into shareholders' agreements to re-distribute voting rights and to determine special contractual rules applicable to transactions with shares, etc.

Each common share carries one vote at the general shareholders meeting (except for cases of cumulative voting provided by law), and most resolutions are made by a simple majority vote, although for certain key decisions a qualified majority of 75% is required. Owners of preference shares are entitled to vote only in special cases (specifically, liquidation or reorganization).

Russian law regulations with regard to minority shareholders apply equally to JSCs.

Shareholders in a JSC possess pre-emptive rights to acquire additional shares allocated as public offering or issuance shares in the amount proportionate to the number of shares of the same type that they possess.

Shareholders have equal access to the internal accounting documents of the JSC as well as appraisal reports, the list of JSC affiliates and other documents under the current legislation. A person that acquires more than 30% of the overall shares of a PJSC is obliged to issue a public offer to other shareholders of the respective types of shares and owners of issuance securities within 35 days of the time of entering the relevant credit entry in their personal account on the acquisition of such shares from them.

A person that acquires more than 95% of the shares in the charter capital of a PJSC as a result of voluntary JSC shares offers or obligatory shares offers is obliged to buy out the remaining shares that belong to the other shareholders as well as issuance securities.

Shareholders holding no less than 2% of voting shares overall of a JSC are entitled to bring issues to the agenda of the annual general shareholders' meeting and propose candidates for the board of directors (supervisory board) of the JSC, its collective executive body or its revision commission and also the candidacy for the CEO position. The day-to-day management of the JSC is performed by the General Director (Director). The functions of the CEO can be implemented by one Director, several persons acting jointly as one CEO or by several CEOs, acting independently (also applicable to LLC). If it is provided for by the Charter, a collective executive body (where the General Director acts as the Chairperson) may be created. The JSC is able to delegate the powers of the executive body to the Managing company acting under special agreement. The executive body deals with all matters which do not come under the jurisdiction of either the BoD or the general meeting. The functions of the CEO are rather similar to those in an LLC.

For the PJSC existence of collective management body (supervisory or other board, BoD), which shall comprise not less than 5 members, is obligatory, for the purposes of protecting shareholder rights from violation by the management. The CEO and members of collective executive bodies cannot preside and constitute more than one fourth of the collegial management body's members. The powers of the BoD include the convocation and conduction of general meetings, the adoption of resolutions on the issuance of additional shares, etc. (these powers may be limited by the Charter).

Partnership

The management in a partnership is carried out under the mutual consent of all partners, unless specific decision-making rules are stipulated by the Foundation Agreement. Limited partners, as mentioned, are not entitled to participate in management or carry out business on behalf of the partnership.

Each full partner is entitled to carry out business on behalf of the partnership, unless the Foundation Agreement indicates that business should be carried out either jointly or by certain partner(s). Due to this, partners in a full partnership are jointly and severally liable for the obligations of the entity, provided that such liability is not limited to the value of the investments.

Limited partners have no access to decision-making, however their liability for the partnership's obligations is limited. Also, the name of the limited partnership may not contain the names of limited partners (otherwise they

shall be considered full partners). A partnership does not have any supervisory body, as such a form of legal entity is mostly considered an incorporation of individuals, rather than an incorporation of capitals. Nonetheless, each partner is granted access to all of the partnership's documents and is entitled to demand information if the management of affairs is delegated to certain partner(s).

Business Partnership

Similarly to the JSC and the LLC, the creation and functioning of a sole executive body is put forward, which should be elected unanimously by individual partners only and bears liability for damages inflicted to the partnership.

The Management Agreement may define, inter alia, a special procedure for approving the actions of this sole executive body.

One of the main peculiarities of business partnerships is the delegation of significant discretionary powers in determining the means of management, the structuring of corporate relations, and the possibility of stipulating different regimes of partners' rights and duties. The embodiment of permissive regulation of the business partnership's activities is the Management Agreement, which is different from Foundation Agreements and Shareholders' Agreements.

Partners are able to regulate their internal corporate relationship (including the establishment of veto rights) to the full extent possible by entering into a Management Agreement.

The Management Agreement may stipulate the establishment of other bodies of the business partnership. However, there are no restrictions on such bodies with regard to their types, powers and functions.

Representative Offices and Branches

The affairs of branches and representative offices are administrated by the head of the subdivision. Such a body should be appointed and empowered by Power of Attorney by the head company. The powers of the head of the subdivision may be transferred to third parties through another Power of Attorney, unless this is restricted by the head company.

It should be noted that rules on major and interested party transactions apply to branches and representative offices, hence certain corporate approval systems should be implemented by the head company if necessary.

3.2 Accounting and reporting requirements

Limited Liability Company

A peculiarity of the LLC is in the absence of mandatory information disclosure rules (the only case of an LLC being subject to disclosure is public bond issuance), but the need to furnish tax authorities with accounting information for taxation purposes. The LLC is obliged to keep information regarding its business activities, in particular: the resolutions of its general meetings, its certificate of state registration, local acts, lists of affiliates, etc. Any participant is entitled to access the given information.

It should be noted that under Russian Law, mandatory audit is required only for a limited range of business entities (regardless of the type of entity), engaged in certain cases provided by the law, e.g. for some types of activities, namely: banks and other credit organizations; insurance companies; commodity, currency or stock exchange companies; custodies companies; brokers; dealers; securities trust managing organizations; registrars, etc.

Being a rather closed business entity, an LLC is not subject to mandatory auditing, except in the

case of public bond issuance. An audit may be voluntarily performed with the use of an independent auditor. Moreover, mandatory auditing must be conducted at the request of participants. A mandatory audit must also be conducted in the case that earnings for the period prior to the auditing period are more than RUB 400,000,000 (approx. 6,000,000 USD) or the value of company assets is more than RUB 60,000,000 (approx. 1,000,000 USD). Establishment of the internal audit commission is not also compulsory for the LLC if provided for in the Charter.

Joint Stock Company

A JSC is required to disclose information and render accounts in accordance with special rules in cases provided by law (for example, when the securities of the JSC are approved for public circulation). In practice, the accounting in a NJSC is similar to that in an LLC, and an PJSC is subject to disclosure procedures and specific requirements.

The validity of the data contained in the annual reports and other accounts, in contrast to the LLC, are subject to mandatory verification by the internal audit commission – a special body to be created in the PJSC. In an NJSC as well as in an LLC, it is not obligatory to establish an internal audit commission, provided that this is stipulated by the Charter. If the JSC is obliged to disclose information, it should involve an independent auditor in the auditing process.

Partnership

Under Russian Law there are absolutely no specific requirements for accounting and mandatory auditing of partnerships.

Business Partnership

There are no specific requirements regarding accounting in a business partnership or mandatory information disclosure.

The law does not define cases when mandatory auditing is required for business partnerships. Auditing should be conducted only if it is stipulated in the Charter or at the request of a partner.

Representative Offices and Branches

Sufficient grounds for either a branch or representative office to perform accounting in Russia for taxation purposes are regular commercial activities on the territory of Russia. According to the official explanations of the Russian tax authorities, a regular character always applies to the commercial activities of those branches and representative offices which are registered (or are bound to register) with the Russian tax authorities (notwithstanding, there are several exceptions when commercial activities are not considered regular). It should be taken into account that such an obligation arises if a subdivision of a foreign head company implements any activities for a period exceeding 30 days in a year and creates any permanent work place. It is important to mention that the limited scope of activities performed by representative offices does not exempt them from profit tax in the same way as a branch, in those cases when a representative office is in fact engaged in commercial activity.

Russian legislation proscribes no obligation to audit a branch or representative office as a separate entity. However, the existence of such an obligation may be determined by the activities of the head company. In that case, a branch or representative office is subject to auditing as a part of the head company, rather than as a separate entity.

4. Foreign Investment, Capitalisation, Residency and Material Visa Restrictions

4.1 Foreign Investment

Foreign investments in Russia are regulated mainly by the Investment Law and the Law on Strategic Investment. The Investment Law stipulates a principal according to which the legal regime of foreign investments and the use of profit gained as a result of such investments cannot be less favorable to Russian investors than the legal regime provided. It contains general principals and guarantees to protect foreign investors' rights, including: the right to freely (without licensing or quoting) import and export personal electronic data carriers, the right to buy shares and securities of Russian organizations, and the guarantee of fair compensation in the case of nationalization or requisition of property.

Foreign investments are defined by the Investment Law as the contribution of foreign capital (i.e., money or other assets) owned by the foreign investor to a business in the territory of the Russian Federation. Rights for the exploitation of natural resources and other rights under contracts are recognized as investments as well. A special term "foreign direct investment" is used to describe a portfolio investment representing no less than 10 percent of equity interest in the company, investment of capital assets in the branch of a foreign legal entity established in the territory of the Russian Federation, and the leasing of equipment (of a certain type and value) carried out by a foreign legal entity in the territory of the Russian Federation.

The Investment Law operates with categories of investment projects and priority investment projects. Priority investment projects enjoy preferential treatment, including tax benefits. To qualify as a priority investment project, the investment must meet certain requirements as regards the amount and procedure of approval. A list of priority investment projects is maintained by the Russian government.

Investment of foreign capital in banks and other credit organizations, insurance organizations, and non-commercial organizations (such as charities and scientific and religious organizations), and also relations defining establishment procedure and termination of foreign banks' representative offices' and other foreign lending agencies' activity are subject to specific regulation under the corresponding Russian laws, such as the Law on Insurance, the Law on the Securities Market, the Law on the Protection of Investors' Rights and Lawful Interests in the Securities Market, the Law on Communal Associations, the Law on Banks and Banking Activity, etc.

The Investment Law guarantees national treatment of foreign investments, with certain exceptions. Special restrictions affecting foreign investors may be introduced only by federal laws where it is necessary to protect the fundamentals of the constitutional system, public moral health, the rights and lawful interests of other persons, and the defense and national security of the state.

The Investment Law provides a system of guarantees for direct foreign investments in Russia. These guarantees shall not apply to foreign capital deposited in banks or other credit institutions or insurance companies, as well as to foreign capital investment in non-profit organizations with a socially beneficial objective in the sphere of education, charity, science, or religion. These forms of investment are governed, respectively, by Russian laws on banks and banking activity, Russian insurance laws, and Russian laws on non-profit

organizations. The system of guarantees includes: fair, efficient, and adequate compensation in the case of investment nationalization or requisition; a grandfathering clause for priority investment projects in which the foreign investment share exceeds 25 percent (unfavorable subsequent amendments to tax legislation do not apply to existing priority investment projects for the period of return of initial investments but not for more than seven years); repatriation of income and proceeds from investments; and repatriation of assets and information previously imported to Russia as an investment.

A special provision of the law recognizes the validity of the assignment of rights and obligations from a foreign investor to another entity. This is a standard clause required by many international financial institutions to underwrite international investment projects.

4.2 Capitalization requirements

Legal entities

Contributions to the charter capital of a legal entity may be made in cash or in kind, and some customs benefits may be available for in-kind contributions made by foreign investors. In-kind contributions exceeding 20 000 RUB (approx. 300 USD) require evaluation by an independent assessor. The charter capital may be increased only after the original charter capital has been paid up in full.

Another option for legal entity financing is receiving a loan by a subsidiary from the mother company. It should be specifically mentioned that such loans may trigger thin capitalization rules in some cases.

The role of thin capitalization rules is to ensure that the interest rate under certain loan agreements between mother and subsidiary companies (referred to as "controlled" debt) corresponds to the market interest rate.

Thin capitalization rules only apply in cases where the mother company owns more than a 20% share in the subsidiary company and the gross debt amount under the loan agreement is 3 times higher than the equity of the subsidiary company (i.e. the debt is a "controlled" one), calculated for the respective quarter of the year.

To determine equity, the quarterly balance value of liabilities should be subtracted from the balance value of assets. Therefore, in the case that in the quarter when the loan was issued (i.e. the debt amounts to 3 bln USD), the equity of the subsidiary is 1 bln USD or less (example: asset value of 1.5 bln USD and liabilities amounting to 0.7 bln. USD), thin capitalization rules will apply.

In the case of the debt being deemed a "controlled" one, thin capitalization rules on interest rate calculation apply. The taxpayer should confirm that the interest rate under such a loan agreement is not higher than the rate calculated in accordance with art. 269 of the Tax code of the Russian Federation. If the interest rate under a "controlled" debt is higher than the rate calculated in accordance with art. 269 of the Tax code of the Russian Federation, the exceeding amount is considered as dividends of the mother company and is subject to tax according to the rate specified in the double tax treaty, while the calculation of the interest rate under art. 269 may only be deducted as an expenditure for the purposes of corporate income tax.

It should also be noted that the law sets a maximum interest rate that may be deducted as an expenditure. For loan agreements

concluded in 2018 this rate is calculated taking into account the provisions of clause 1.2 art. 269 of the Tax code of the Russian Federation, where amounts of applicable interest rates are established depending on the specific currency. For instance, the rates shall meet the following criteria:

1) For loan agreements in RUB: the rate shall be 75-125% from the Bank of Russia key rate (7.25% as of this Review).
2) For loan agreements in USD: the rate shall be from LIBOR rate multiplied by 4 percentage points till LIBOR rate multiplied by 7 percentage points.

Therefore, in order to comply with thin capitalization rules and in order to minimize the risks of additional dividends taxation under "controlled" debt, the mother company is presented with two possible options. The first one is to try to avoid the creation of "controlled" debt. This may be done by ensuring that the balance value of assets at the end of each quarter exceeds the amount of the balance value of liabilities by more than 1 bln USD. In this case, the equity of the subsidiary shall be more than 1 bln USD, thus the debt under the loan agreement will not be a "controlled" one (the 1:3 ratio shall not be met) and the thin capitalization rules will not apply.

In cases when the 1st option cannot be realized, and the debt is qualified as a "controlled" one, the interest rate under the debt must be compared with the rate specified by art. 269 of the Tax code of the Russian Federation. Also, it is recommended that the interest rate under "controlled" debt does not exceed certain percentages as stipulated by clause 1.2 art. 269 of the Tax code of the Russian Federation (as it was mentioned earlier), as only the interest amount calculated at this rate may be deducted from the corporate income tax base as an expenditure.

Representative Offices and Branches

Both branches and representative offices are provided with assets by the head company in accordance with its Charter. The assets of the subdivision should be simultaneously accounted on the balance sheets of the branch or representative office and of the head company.

It should be taken into account that the head company is liable for debts incurred in connection with the affairs of the branch or representative office with all its property rather than only that allotted to the particular subdivision.

4.3 Residency, visa and migration issues in the employment of foreign employees

Employment and migration requirements are provided for by the Labor code of the Russian Federation (hereinafter – "The Labor Code"), the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation", and the Federal Law "On the Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation".

According to the Constitution of the Russian Federation, Russian citizens, foreign citizens, and persons without citizenship have equal access to work.

It should be noted that in case the company decides to employ foreign citizens in Russia, the company will need to obtain work visas for them as a business visa does not grant the right to work.

Foreign citizens can be hired as ordinary employees or as highly-qualified specialists (hereinafter – "HQS"). The hiring procedure and time-frames depend on the status of the foreign citizens involved.

Please note that it is also a decisive point whether or not the company would like to employ the CEO and members of staff as HQS under Russian law. An HQS is an employee with an annual salary amounting to RUB 167 000 per one calendar month. An HQS may benefit from a simplified procedure of obtaining a work permit. In case the CEO and staff do not qualify for the HQS requirements and are employed on a general basis, the relevant permit procedure is more complex and now also includes passing a complex examination on Russian language, Russian history and fundamentals of Russian legislation. Please kindly note that in the Russian Federation, the company wishing to use the services of foreign employees should have reserved a quota for such employees before May of the year preceding the year of hiring. Only specialists for the jobs announced by the Ministry of Labor and Social Development in the quota-exempt professions list can be hired beyond the quota.

The alternative option (which does not require quota reservation) is to hire foreigners as HQS. This will be possible if the foreigners have certain skills and achievements in the area they are going to be employed and if their annual salary will be no less than RUB 167 000 per month as already mentioned above.

Procedure of hiring a foreign employee

It should be noted, in 2016 the Federal Migration Service (FMS) powers have been transferred to the Russian Federation Ministry of the Interior ("MVD").

The following main steps shall be taken by the company in order to hire an expatriate under the ordinary work permit procedure:

- Obtaining a decision from the State Employment Centre for the company confirming the reason for engaging the foreign employee;
- Applying for a quota of foreign employees that the company may hire per annum (no quota requirements for the CEO, the managerial staff and HQS);
- Obtaining permission for the company to engage and use a foreign workforce, issued;
- Obtaining a work permit issued for the employee;
- Obtaining a registration card for the company that allows it to obtain invitation letters and convert visas;
- Obtaining an invitation letter for the visa issued;
- Obtaining a work visa for the employee (done by him/herself);
- Registering the employee with migration authorities;
- Notifying the required authorities on hiring the foreigner.

It usually takes no less than 3 months from the date of the submission of the required documents to the state authorities to obtain a work permit plus the time for the collection of all the necessary documents and the preparation of the required application and other relevant forms.

HQS

The following steps shall be taken in order to hire a highly-qualified foreign specialist:

- Registering the Company and obtaining the registration card that allows the Company to obtain invitation letters and convert visas;
- Obtaining a work permit for the employee;
- Notifying the tax authority about the hiring;
- Obtaining an invitation letter for the visa;
- Obtaining a work visa for the foreign employee;
- Registering the employee with migration authorities;
- Carrying out other registrations and regular reporting to the state authorities after the foreigner is hired.

The estimated time for obtaining a work permit is from 14 business days to 1 month from the date of submission of the required documents to the state authorities plus the time for collection of all necessary documents and preparation of the required application and other relevant forms.

Visa issues

To enter the Russian Federation a foreign citizen must submit a valid identity document, accepted as such by the Russian Federation, and a visa, if no other means of entry into the Russian Federation is established by an international agreement. As a whole, a visa under the legislation of the Russian Federation is a document, permitting staying in Russia for a specific period of time. Business visas are issued to foreigners who visit Russia for the purposes of official or private business, i.e. visas are intended for foreign citizens who arrive in Russia in order to meet with their business partners, sign contracts, etc. The procedure and terms of the issuance and provision of a visa, the extension of its validity period, its re-issuance in case of loss, and the visa cancellation procedure, are established by the Government Regulation of the Russian Federation.

Depending on the purpose of entry into Russian Federation and the lodgment purpose a foreign citizen can be given a diplomatic, service, ordinary, transit, and temporary residence visa.

There are 7 main types of ordinary visas for visiting the Russian Federation:

- personal visa;
- business visa;
- tourist visa;
- educational visa;
- work visa;
- humanitarian visa;
- visa for entry into Russian Federation with the purpose to obtain political asylum;
- visa to receive Russian citizenship.

According to Russian legislation visas may be issued with up to two entries and for up to 90 days. However, you can use multiple-entry business visas, valid for 6 or 12 months but with unlimited entries/exits.

In practice the following types of Russian business visas exist in Russian jurisdiction:

- Single entry, valid for up to 3 months;
- Double entry, valid for up 3 months;
- Multiple entry visas.

The Law on Amendments to the Law on the Legal Status of Foreigner Citizens increases the maximum validity period of the work permit for foreign qualified professionals for up to three years instead of the one year that was used before. Moreover, the accompanied work visa will be valid for a maximum of three years also. However, the duration period of the work permit and work visa cannot exceed the term of the labor agreement concluded with the foreign specialist. The work permit along with the work visa can be prolonged upon the employee's request, also for up to three calendar years.

Procedure and terms of obtaining a business visa

To obtain a business visa, a foreign national should apply to a diplomatic or a consular representative office of the Russian Federation in person or via his legal representative and should submit the following documents in general:

- a valid identity document, accepted as such by the Russian Federation;
- a completed visa application form;
- one photograph;
- a medical insurance policy, unless otherwise provided for by international agreements of the Russian Federation;
- an additional certificate proving that the applicant does not have HIV (AIDS), in cases where the foreign national applies for a visa for a term exceeding three months. An ordinary business visa is issued for a foreign citizen entering the Russian Federation for the purpose of making business activities. An ordinary business visa can be a single or double lasting up to 3 months, or a multiple lasting up to 1 year
- certificate of consular fee payment.

Ordinary business visas are issued on the basis of an invitation to enter the territory of the Russian Federation, issued in accordance with the legislation of the Russian Federation and the decisions of the Ministry of Foreign Affairs of the Russian Federation, directed to the diplomatic mission or consular office of the Russian Federation. An ordinary business visa can also be issued on the basis of a decision of the head of the diplomatic mission or consular office of the Russian Federation in connection with the necessity to enter the territory of the Russian Federation to participate in international and national official, economic, social, political and scientific events on the basis of a written application of a foreign citizen.

4.4. Any restrictions on remitting funds out of jurisdiction

Current currency regulations establish basic rules of currency regulation and control. A currency transaction report form is required for certain transactions (for instance, exterior trade and loans at Russian banks). The main requirements in respect to currency transaction report forms are set out by the Regulations of the Bank of Russia.

A Russian counterparty must comply with these requirements in connection with payments to another counterparty (import or export transactions). A currency transaction report form is issued in the process of foreign exchange operations in connection with foreign trade transactions, if the contract amount exceeds the equivalent of 50,000 USD at the official exchange rate of foreign currencies in relation to the Russian ruble,

defined by the Bank of Russia at the date of the contract's conclusion.

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Areas of practice

Antitrust & competition, banking & finance, bankruptcy & restructuring, corporate & M&A, criminal defense, dispute resolution, employment, government relations, intellectual property, real estate & construction, and tax & customs